



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Priority I Construction of Brevard, Inc.

**File:** B-255721; B-255722; B-255723; B-255724;  
B-255725; B-255726; B-255727; B-255728

**Date:** November 16, 1993

Stephen M. Bull, Esq., Bull and Associates, P.A., for the  
protester.

### DIGEST

Where protest of the Small Business Administration's (SBA) denial of certificates of competency (COC), which was based on the misdemeanor conviction and probation status of the protester's vice president, represents a challenge to the reasonableness of the SBA's decisionmaking process rather than a showing of possible bad faith on the part of the SBA, the matter is properly for review by the federal courts rather than the General Accounting Office, which has no jurisdiction to review the SBA's judgments concerning issuance of COCs.

### DECISION

Priority I Construction of Brevard, Inc. protests the refusal of the Small Business Administration (SBA) to issue it certificates of competency (COC) in connection with solicitation Nos. F08650-93-B-0091; F08650-93-B-0055; F08650-93-B-0120; F08650-93-B-0122; F08650-93-B-0118; F08650-93-B-0090; F08650-93-B-0068; and F08650-93-B-0092, respectively, issued by the Department of the Air Force.

We dismiss the protests.

The Air Force found Priority I to be nonresponsible for several reasons, including a failure to demonstrate a satisfactory record of integrity and business ethics. Because Priority I is a small business, the matter was referred to the SBA for consideration under the COC process.

The material furnished to the SBA by Priority I in support of the COC applications included information that Priority I's vice president had recently been sentenced to 6-months probation after he filed a no contest plea to a misdemeanor charge involving a medical prescription. The SBA declined to issue COCs based upon the "company's lack of

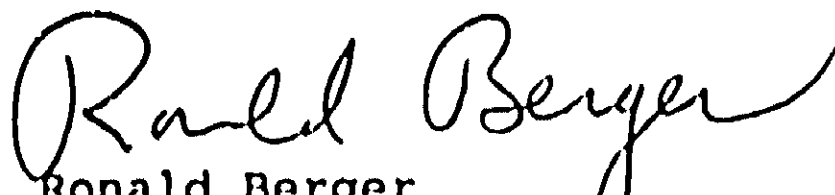
integrity evidenced by a principal of the company being under the jurisdiction of the court for criminal offenses." Priority I challenges the SBA's decision as "illegal, arbitrary, capricious or in bad faith."

The Small Business Act, 15 U.S.C. § 637(b)(7) (1988), gives the SBA, not our Office, the conclusive authority to review a contracting officer's determination that a small business is not responsible. We have been given no authority to review the SBA's judgments concerning COC issuance. We therefore do not review challenges to the SBA's decision not to issue a COC unless there is a showing that the COC denial resulted from bad faith or a failure to consider vital information because of how information was presented to or withheld from the SBA by the procuring agency. Joanell Labs., Inc., B-242415.16, Mar. 5, 1993, 93-1 CPD ¶ 207; 4 C.F.R. § 21.3(m)(3) (1993).

The protester argues that the SBA relied on an incorrect form in eliciting information from the protester in support of the COC applications. The protester also asserts that in any event the prescription offense is not a sufficient basis for COC denial both in and of itself and because the vice president is only one of many officers, shareholders, and directors of the protester, such that one officer's offense could not properly be used to conclude that the company as a whole lacks a satisfactory record of business ethics. The protester further complains that in making its decision, the SBA considered information from a competitor which the protester has not seen and been given an opportunity to rebut.

These arguments do not establish any reasonable possibility that the SBA acted in bad faith or that vital information was not considered. At best, the protester is disputing the reasonableness of the SBA's judgment that the company lacks integrity. This type of challenge to the SBA's decisionmaking is properly a matter for the federal courts rather than our Office. Joanell Labs, Inc., supra, n. 4.

The protests are dismissed.

  
Ronald Berger  
Associate General Counsel